

HUBERT W. SCUDDER

IBLA 77-344

Decided May 10, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-38899-B.

Reversed.

1. Oil and Gas Leases: Reinstatement

Failure to pay oil and gas lease rental timely may be justifiable where it was caused by factors outside the lessee's control which were the proximate cause of the late payment. A lessee's head injuries requiring hospitalization during the month before the anniversary date of the lease constitutes proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

APPEARANCES: Hubert W. and Eileen Scudder, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Hubert W. Scudder appeals from the April 26, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease W-38899-B. The lease had terminated automatically by operation of law for failure to pay the annual rental on or before the anniversary date, April 1, 1977, as required by 30 U.S.C. § 188(b) (1970). The annual rental was received by the State Office on April 6, 1977, in an envelope postmarked April 4, 1977.

On appeal, appellant submits a statement by his wife. Mrs. Scudder indicates that at the end of March 1977 she was forced to take care of family business matters because appellant was in the hospital. Appellant had suffered a severe stroke at some earlier date and was afflicted with a "blackout session" that March. When

appellant blacked out, he hit his head on the curb and was hospitalized. Mrs. Scudder states that when she realized the rental was due April 1, she attempted to ascertain the correct amount. Upon doing so, she placed the check in her rural mailbox for pickup on the anniversary date. When she discovered the mail had not been picked up, she immediately went to her local post office and mailed the check, resulting in the April 4 postmark.

An oil and gas lease which has terminated for failure to pay rental timely may only be reinstated if the lessee can show that he meets the criteria of 30 U.S.C. § 188(c) (1970). That statute requires, among other things, that the failure to pay rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." For the following reasons, we find that appellant's failure to pay rental timely was justifiable and his lease should be reinstated.

[1] By mailing the rental 3 days after it was due, appellant did not exercise reasonable diligence. E.g., Albert R. Fairfield, 34 IBLA 132 (1978); Lula Mai Martin, 27 IBLA 360 (1976). Failure to exercise reasonable diligence is an objective determination based on 43 CFR 3108.2-1(c)(2). However, such a failure may be justifiable where it was caused by factors outside the lessee's control which were the proximate cause of the late payment. Genevieve C. Aabye, 33 IBLA 285 (1978); Leonard A. J. Tancredi, 32 IBLA 325 (1977).

In explaining when failure to pay rental timely is justifiable, we stated in Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Civil No. CV-74-1112-EC (C.D. Cal. 1975):

This is thus a * * * test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family, occu[r]ring with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

We find that the "factual milieu" of this case falls within the range of circumstances deemed justifiable within the meaning of the reinstatement provisions in 30 U.S.C. § 188(c) (1970). Through factors outside his control, i.e., a blackout and blow to the head, appellant was hospitalized just prior to the anniversary date. Obviously, this prevented appellant from giving "full attention to his business affairs" and from attending to "the normal conduct" of his business. Billy Wright, 29 IBLA 81 (1977); Ada E. Lundgren, 17 IBLA 132 (1974). Unlike the situation in Albert R. Fairfield, supra, where

the Board found that illness in the lessee's family was not the proximate cause of his failure to pay rental timely, here the lessee himself was hospitalized and unable to tend to his affairs. Cf. C. H. Winters, 34 IBLA 350 (1978) (the Board held a late rental payment justifiable where the lessee stayed longer than anticipated to care for a sick friend and therefore was unable to mail the rental payment until the anniversary date). The unsuccessful attempt of appellant's wife to pay the rental timely does not diminish in any way the proximate cause of appellant's hospitalization or the extent to which the hospitalization constituted a justifiable reason for failure to pay the rental timely. Accordingly, appellant's oil and gas lease should be reinstated under 30 U.S.C. § 188(c) (1970), all else being regular. Fredres E. Laubaugh, 24 IBLA 306 (1976); David Kirkland, 19 IBLA 305 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

